Case Summary

Complaint against the Buildings Department for impropriety in carrying out emergency works

The Complaint

The complainant, owner of a flat in a building, complained against the Buildings Department (BD) for:

(a) failing to notify all owners in the building before carrying out emergency works on the building; and

(b) charging excessively high costs for the works and apportioning costs unreasonably among the owners.

Sequence of Events

2. In May/June in a recent year, incessant downpours resulted in quite a number of accidents caused by loose rendering falling from external walls. BD mounted a special operation to inspect buildings. When external walls were found to be damaged or to have loose rendering, thus posing imminent danger to life (including passers-by) and property, the owners concerned would be required to carry out emergency works immediately. If the owners should fail to do so, the Department would arrange for its contractor to remove those portions of the external walls to ensure public safety.

3. During the inspection of the complainant's building, BD staff found loose rendering on the external walls that would pose imminent danger to the public. As there was no management office or owners' corporation, BD staff attempted to contact individual owners to request them to engage a contractor for emergency works. Unfortunately, the gate at the main entrance to the building was locked and there was no mailbox. Unable to reach the occupants or owners of the building, BD staff asked one of the shop tenants on the ground floor of the adjacent building to notify owners of the subject building and inform them the external walls required emergency repairs.

4. BD arranged a contractor to carry out the emergency works two days later to remove the loose rendering on the external walls of that building. Before the works commenced, BD had posted a notice at the gate of the main entrance of the building so that owners and tenants would learn of the emergency works to be carried out and the recovery of costs. At the same time, verbal notification was given to the shop tenants on the ground floor of the building in question and the caretaker of an adjacent building (on the left side) announcing the need for emergency

repairs. The works were completed that day and the notice was removed by the Department.

5. Several months later, BD wrote to all owners of the building to recover costs and demand notes were subsequently issued.

Our Observations and Opinions

6. Section 26(4) of the Buildings Ordinance stipulates that in cases of emergency, the Building Authority may arrange to carry out such works as he deems necessary without prior notice to the owner. In this light, we considered BD to have acted according to the law and in the interest of public safety in arranging for the emergency works. In principle, there was no impropriety in its action.

7. However, BD had not shown adequate consideration for the affected owners. In general, BD practice has been to contact individual owners to give them a chance to arrange for the works themselves, except in extreme emergencies.

8. In this case, BD staff had not made use of the one-and-a-half days, after inspection of the building and before commencement of works, to contact the owners. Furthermore, while inspecting the building, its staff had neither posted a pre-printed Contact Slip at a prominent place at the front gate nor slipped copies of the Contact Slip through the gate for the owners to have a better chance of learning about the need for emergency works and discussing the matter with BD in time.

9. It was regrettable that BD had failed to notify the owners. Although BD had tried to do so through the tenant of a shop on the ground floor, the latter had no obligation to comply. BD had forgotten that as a government department, it ought to be prudent when dealing with the public. It had not been sufficiently fair and open in handling the case.

10. Against this background, complaint (a) was **partially substantiated**.

11. The costs of the emergency repairs included the costs for the contractor’s work and supervision by BD staff. As external walls were common areas for owners of the building, the costs of their repairs naturally should be borne by all of them. In this connection, BD had sent a letter to the owners explaining the basis of calculation. However, as the standard for determining such costs is a matter of professional judgement, this Office was not in a position to comment.

12. Complaint (b) was, therefore, **unsubstantiated**.

Conclusion

13. Overall, The Ombudsman considered this case **partially substantiated**.

14. Meanwhile, this Office considered responsibility for routine maintenance and repairs of a building to rest with owners. It was no surprise and so not improper for BD to carry out repairs only for safety and not for beautification. The owners concerned could engage contractors themselves for further improvement.

Recommendations

15. The Ombudsman considers owners to be responsible for the maintenance of their own property. This Office recommended that BD -

(i) issue a letter of apology to the complainant for failing to inform him in advance;

(ii) enhance staff training and instruct them to do their best to deliver Contact Slips to owners or flats concerned, to inform them of the action to be taken by the Department;

(iii) post notices at prominent places at the building as early as possible before the commencement of any emergency works, to inform the residents of the action to be taken by the Department and to avoid implicit misunderstanding; and

(iv) formulate guidelines to require officers concerned to notify owners affected in advance or to discuss with them any emergency action to be taken.

BD accepted all our recommendations and agreed to implement them.

Office of The Ombudsman
January 2004